

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Bert W. Elliott)	Group Art Unit 3633
)	
Serial No.:	10/664,552)	Ex.: Jeanette E. Chapman
)	
Filed:	September 18, 2003)	Confirmation No. 4288
)	
For:	LAMINATED STARTER)	Attorney Docket No.: 25244A
	SHINGLE FOR A ROOF)	
	COVERING)	

REMARKS ACCOMPANYING REQUEST
FOR PRE-APPEAL BRIEF CONFERENCE

Mail Stop AF
 Commissioner for Patents, P.O. Box 1450
 Alexandria, VA 22313-1450

Sir:

Pursuant to the procedure specified in the Notice published in the Official Gazette on July 12, 2005, a pre-appeal brief conference is requested in the present application for the reasons set forth below.

Please charge any necessary fees to Deposit Account No. 50-0568.

REMARKS

Claims 5, 13-14, 21, 28-30 and 32-40 are pending in the application. In the Office Action dated July 22, 2008, these claims were finally rejected. The rejection of these claims contains error in that limitations of these claims are clearly not met by the cited references.

Rejection of Independent Claims 5, 13, 14 and 21

In the outstanding office Action, independent claims 5, 13, 14 and 21 were finally rejected under 35 U.S.C. §103(a) as being unpatentable over Diamond (U.S. No. 4,148,168) in view of the King et al. (U.S. No. 6,220,329) and Steiner, Jr. et al. (U.S. No. 6,174,403) references.

A. The Cited References, Taken Individually, Do Not Teach a Laminated Starter Strip

As explained in Applicant's response dated October 6, 2008, at page 8 beginning in the third paragraph, the cited references taken individually do not disclose or suggest the laminated starter strip defined in Applicant's independent claims 5, 13, 14 and 21 to those of ordinary skill in the art.

Applicant's independent claims 5, 13, 14 and 21 each provide laminated starter shingles, wherein the laminated starter shingles include an underlay sheet laminated below an overlay sheet and wherein the height of the overlay sheet of the starter shingle is greater than the height of the underlay sheet of the starter shingle.

The Examiner correctly points out, on page 3 of the outstanding Office Action, that the Diamond reference lacks a laminated starter strip. Rather, the Diamond reference provides a course "I" of standard single layer three tab shingles (14) as a starter strip. The Steiner Jr. et al. reference also does not provide a laminated starter shingle. Rather, as noted by the Examiner on page 3, the Steiner Jr. et al. reference provides a laminated shingle having layers of various heights. Finally, the King reference does not disclose a laminated starter

strip. Rather, the King reference discloses a three-layer laminated roofing shingle having a bottom layer (126), a middle layer 124 and a top layer 122 (column 15, lines 49-65). The laminated roofing shingles disclosed in the King reference are standard covering shingles intended to provide both weather resistance and an attractive appearance. One of ordinary skill in the art would understand that the roofing shingles disclosed in the King reference are intended to be installed in courses over starter shingles.

B. The King Reference Does Not Have the Required Structure of a Starter Shingle

On pages 3 and 5 of the outstanding Office Action, the Examiner asserts the King reference discloses a starter shingle (126). As explained in Applicant's response dated October 6, 2008, at page 8 beginning in the third paragraph, the King reference discloses a three-layer laminated roofing shingle having a bottom layer (126), a middle layer 124 and a top layer 122.

As discussed in Applicant's Specification beginning at page 2, first paragraph, a starter strip is a unique first course of shingles applied along the lower or eave edge of a roof deck before the commencement of the application of standard shingles. The art recognizes that the term "starter shingles" means unique shingles applied at the eave prior to the application of the covering shingles. The two layers of a starter strip provide protection beneath the first course of standard shingles where there is no headlap layer from a lower course of shingles. Additionally, the two layers of a starter shingle provide protection between the tabs of standard shingles in a subsequent covering course. The purpose of a starter strip is to provide a base for subsequent courses of covering shingles and to ensure proper weatherproofing of the roof system by sealing gaps beneath the covering shingles. A starter shingle must provide these functions while providing an attractive appearance when installed beneath the covering shingles. In contrast, the King reference merely discloses a bottom layer (126),

having a single thickness, of a laminated shingle. Nothing the in the King reference indicates the use of any different or unique shingle for a starter strip.

C. The Suggested Combination of References Results in an Inoperative Structure

As explained in Applicant's response dated October 6, 2008, at page 8 beginning in the last paragraph, the combination of the cited references, as suggested by the Examiner, results in a structure that is inoperable for its intended purpose for several reasons.

First, the laminated roofing shingle of the King reference includes raised portions (148, 150, 152 and 154) and lower portions (136, 138, 140 and 142). In the event the laminated roofing shingle of King is installed as a starter shingle and subsequently covered by a course of covering shingles, the lower portions (136, 138, 140 and 142) would be exposed beneath the course of covering shingles. The exposed lower portions (136, 138, 140 and 142) would form gaps in the roofing system. The formed gaps would prohibit proper weatherproofing and would provide an unsightly appearance. The formed gaps would not properly seal the roofing structure, resulting in water leakage leading to the roof deck. Accordingly, the laminated shingle as provided by the King reference cannot be used as a starter strip and the resulting combined structure using the King laminated shingle, as suggested by the Examiner, would be inoperable for the intended purpose and unacceptable as a starter shingle.

Second, as explained in Applicant's Specification at page 2, beginning in the last paragraph and as discussed above, the laminated shingle disclosed in the King reference only provides a single thickness bottom layer (126). Accordingly, the single thickness bottom layer (126) would not provide the necessary protection beneath the first course of standard covering shingles where there is no headlap layer from a lower course.

D. The King Reference Cannot be Modified to Provide a Starter Strip

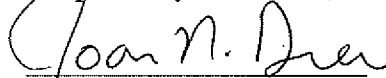
As explained in Applicant's response dated October 6, 2008, at page 9 beginning in the first paragraph, the three-layer laminated roofing shingle

disclosed in the King reference cannot be modified for use as a starter strip. As one of ordinary skill can appreciate, there are several standard practices for providing starter shingles including modifying a standard three tab single-layer shingle by cutting the shingles to remove the tabs and commercially purchasing available starter shingles. In order to use the King roofing shingle as a starter shingle, the King shingle would have to be cut lengthwise to remove the raised portions (148, 150, 152 and 154). In this event, the edges of the three layers (126, 124 and 122) would be exposed beneath the course of covering shingles. The exposed edges of the three layers, on such a starter shingle, would provide an unsightly appearance when installed beneath a subsequent course of laminated shingles. Therefore, the modification suggested by the Examiner would not result in an acceptable starter shingle.

Conclusion

In conclusion with respect to the rejection under 35 U.S.C. §103(a), Applicant asserts none of the cited references discloses a starter strip, the King reference does not have the necessary structure of a starter shingle, the suggested combination of references results in an inoperative structure and the King reference cannot be modified to provide a starter strip. Accordingly, the 35 U.S.C. §103(a) rejection of claims 5, 13, 14 and 21 should be withdrawn. In view of the above remarks, Applicant respectfully requests withdrawal of the rejections, and allowance of the claims.

Respectfully submitted,



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